IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1194 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the Civil Judge? No :

MAGANLAL JIVANLAL GANDHI

Versus

HEIRS OF VISHRAMBHAI P PATEL

Appearance:

MR DD VYAS for Petitioner

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/03/2000

ORAL JUDGEMENT

1. This is landlord's revision under Section 29(2) of the Bombay Rent Act (for short "the Act") arising out of the following brief facts :

The demised premises was let out by the landlord

revisionist to the defendant respondent on monthly rent of Rs.15/-. The respondent was in arrears of rent from 1.11.1977 to 31.7.1979. Inspite of service of notice of demand the tenant respondent did not pay the arrears of rent. This was one of the grounds on which eviction of the respondent was sought by the revisionist. The other ground for eviction was that the tenant had acquired suitable residential accommodation and had got constructed house at Gauri Shanker Maholla, Patel Society, Navsari. The third ground for eviction of the respondent was reasonable, bonafide and personal requirement of the accommodation by the landlord. It was alleged that the landlord had his business at Navsari and had to come from village Tavdi to attend his business at Navsari. Besides, it was alleged that the suit accommodation was required by the landlord for his grown-up children, who had attained marriagable age. The next ground for eviction was that the defendant respondent had constructed bath-room and Sandas without permission of the plaintiff - revisionist which is a permanent structure.

2. The tenant respondent in his written statement pleaded that he was always ready and willing to pay rent and also tendered the entire arrears of rent by Money Orders, which were wrongly refused by the landlord revisionist. Regarding construction of latrine and bath-room it was a case of the defendant that these were the necessities which were not provided by the landlord hence these constructions were raised. These are not permanent structures. Bonafide personal requirement of the landlord was disputed by the tenant. The tenant admitted that he had constructed double storied building at Patel Society and there were three tenants in the said premises. But these tenants were kept for the reason that for construction of this building loan was raised from them and since the loan could not be repaid to them they were permitted to occupy the building as tenants.

3. The trial Court framed seven issues and found that the defendant was not in arrears of rent for more than six months when the notice was served. It also found that the tenant did not raise any permanent construction in the demised premises. It further found that the landlord reasonably and bonafide required the suit premises for his use and occupation. On the question of comparative hardship the trial Court found that greater hardship would be caused to the landlord. With these findings the suit for eviction and recovery of arrears of rent, etc. was decreed by the trial Court.

4. In Appeal filed by the tenant the Appellate Court reversed the Judgment and Decree of the trial Court and dismissed the Suit of the landlord revisionist hence this revision.

5. The revision is pending since 1983. The respondents were served, but they are not present nor any counsel is present. The case was called out two times. As such Shri D.D.Vyas, learned Counsel for the revisionist was heard and the material on record including the Judgments of the Courts below were examined.

6. The Judgment of the lower Appellate Court is based on surmises and conjectures. A request was made before the lower Appellate Court for framing additional issue under Section 13(1)(l) of the Act. It was pointed out to the Appellate Court that inspite of pleadings contained in the plaint no issue was framed by the trial Court and the Appellate Court could frame such issue from the pleadings of the parties. The lower Appellate Court found that raising of issue under Sec. 13(1)(l) was not at all warranted. From the Judgment of the trial Court it is clear that assertion was made in the plaint that the tenant had acquired suitable residential accommodation as he has got constructed house at Gauri Shanker Maholla, Patel Society, Navsari. Similar allegation was made in the notice of demand and termination of tenancy. This fact was admitted by the tenant in his written statement. As such, if this fact was alleged by the plaintiff and was admitted by the defendant no issue was required to be framed. Consequently on this admission alone the Suit for eviction under sec.13(10(l) could be decreed. It is manifest from the notice as well as the plaint that the allegations constituting the ground for eviction u/s. 13(1)(l) existed on the date of the notice as well as on the date of Suit. On identical facts the Division Bench of this Court in Shivlal Nathuram v/s. Harshadrai Haribhai Oaz, reported in 21 G.L.R. 1999 held that where the eviction is sought on ground of tenant acquiring suitable residence the cause of action must exist at the time of notice and also at the time of filing of Suit for eviction. It was also held in this case that if the tenant gives away such acquired premises during pendency of the Suit to some persons as tenant, etc. then such tenant can not get protection under section 13(10(l) of the Act. It was also held that it should be necessary that a tenant has acquired or has been allotted suitable residence and that the acquisition or allotment continued in existence till the date of filing of the Suit. The cause of action provided u/s.13(1)(l) of the Act must

exist not only on or before the notice to quit but it must also exist at the time when the Suit is filed. The contention of the tenant that in order to get decree of eviction the tenant also must continue to be in possession of the residence at the time of decree is unwarranted.

7. It is clear from the written statement that the tenant has not only admitted the acquisition by construction of double storied building in Navsari, but also admitted that it has been let out to the tenants. According to the respondent those tenants are the persons from whom the respondent raised loan for construction of double storied building and since he could not repay the loan he let out the accommodation to those persons. This is not the excuse to refuse decree for eviction u/s.13(1)(l) of the Act. If the tenant has acquired alternative accommodation and has parted with the same to other persons he has to be evicted u/s.13(1)(l) of the Act. It is no where stated that the double storied house so constructed by the respondent is in any way insufficient to suit his requirement in the demised accommodation. Consequently even without framing of issue when the fact was admitted and there was material on record the decree for eviction could be passed on this ground and non-framing of issue on this point could not be a ground for refusing the decree for eviction. The Appellate Court was therefore in error in criticising the trial Court that it has impliedly given up the landlord's plea of eviction on ground of personal and bonafide requirement.

8. The Lower Appellate Court has not given any cogent reasons for differing with the trial court about the decree for eviction on the ground of reasonable and personal bonafide requirement of the accommodation by the landlord revisionist. It has simply observed that the trial Court has erroneously given go-bye to the ground of Section 13(1)(l) of the Act. It seems that the lower Appellate Court had not perused the judgment of the trial Court. Issue No.4 was framed under Sec.13(1)(g). Comparative hardship was also to be considered under Issue No.5 and the findings on these two issues are clearly recorded by the trial Court in favour of the landlord. Since no reason has been given by the Appellate Court for differing with the reasoning and findings of the trial Court on these two points the Judgment of the Appellate Court can be said to be illegal and perverse. Revisional interference in the Judgment of the Appellate Court in these circumstances is required.

9. The trial Court has considered the requirement of the landlord and inconvenience caused to him for attending his business by coming from the village to Navsari. The trial Court has also considered the requirement of the landlord for providing accommodation to his children who had attained marriagable age. Of course, by now they must have been married. The additional accommodation was certainly needed by the landlord and the findings that the landlord had reasonable and bonafide personal requirement of the tenanted accommodation does not suffer from any infirmity. Such findings cannot be said to be arbitrary or illegal. The question of comparative hardship of the landlord and tenant was also considered and weighed by the trial Court. Then only one sentence will be sufficient to affirm the findings of the trial Court on these issues. Since the tenant had constructed double storied building he could have shifted there and instead of shifting to the newly constructed house he had let out the same to various tenants. Since the accommodation was available to the tenant and he did not shift there; rather he had let out to various tenants it can be said that greater hardship was not likely to be caused to the tenant. As such the findings of the trial Court on Issues No.4 & 5 could not be disturbed by imaginary reasoning given by the Appellate Court.

10. Thus, for the reasons stated above the decree of the trial Court was perfectly in accordance with law which was illegally set aside by the lower Appellate Court. The revision, in these circumstances, succeeds and is hereby allowed. The Judgment and Decree of the lower Appellate Court are set aside while that of the trial court are restored. No order as to costs.

sd/-

Date : March 03, 2000 (D. C. Srivastava, J.)

sas